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Subject:—

Opinions under the Land Acquisition Act, 1894.

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Legal Department File No. C. Leg./1947.

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Orders contained in Cent. letter
No. 3579/45 dated 6-1-45.

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R.L.No. 2170/24-8-47.

Submitted with reference to Secy. R.D.'s note dated 21-8-47 at p. 115 ante.

Certain Survey Numbers of Acher village including S. No. 63/2 belonging to Rao Saheb V.T. Shah were notified for acquisition by the Ahmedabad Electricity Co. Ltd. for the purposes of quarter for the staff of its Power House at Shahpur and possession has already been given to the Company under urgency calume on 15th/17th September 1945. The award has not been made as yet as the Rao Saheb has raised certain objections to the notices given under sec. 4(1) and 9 of the Land Acquisition Act, 1894 (I of 1894). For the reasons stated in para. 2 of his opinion No. 3778, dated 20-5-46, the R.L.A. has held that there was no defect in the notice under section 4(1).

Section 9 contemplates two kinds of notices. The notice and under sub-section (2) is the public notice and under sub-section (3) is the personal notice. These notices and are to be given by the officer concerned stating that Govt. intends to take possession of the land and that claims to compensation for all interests in the land should be made to him. The notices must state the time (not earlier than 15 days after the date of the publication of the public notice.) before which the claimants should appear before the officer. Copies of the publick notices and personal notice served on the Rao Saheb are not among the papers. It, however, appears that the personal notice was served on the Rao Saheb on 11th September, 1945 i.e. some 4 or 6 days before possession was taken but it did mention the date before which the claimant was to appear before the Land Acquisition Officer and state the nature of his interest in the land proposed to be acquired. The Rao Saheb did not appear before the Officer. In view of the defect in the notice the R.L.A., in para. 4 of his opinion dated 20th May, 1946 observed that the Rao Saheb can apply to the Collector, under section 18 to make a reference to the Court and press his claim to compensation under section 25, inspite of his failure to comply with the provisions of section 9.

The questions raised for consideration of the R.L.A. are whether the view expressed by Secy. R.D. in his note dated 13-12-46 at p. 87 regarding the interpretation of section 18 of the Land Acquisition Act, 1894, is correct and whether there is any legal objection to issuing the draft letter at p. 91 ante.

The view taken by Secy., R.D. that a claimant can take the matter to Court under sec. 18 even if the required date is entered in the notice under sec. 9 and he has already made his representation in reply to such notice, is correct. Section 18 confers the right to take the matter to Court on any claimant who has not accepted the award. The scope of enquiry before the Court under section 18 is, however, limited to the grounds of objections raised in the application for reference. The section recognises only four grounds of objections (1) the areas (2) the amount of compensation, (3) the person to whom it is payable, and (4) the apportionment. The Privy Council has observed in Promotha Nath Mullick v. Secretary of State, 57 Cal. 1148, that once it is ascertained that the only objection taken is to the amount of compensation that alone is the "matter" referred and the Court has no power to determine or consider anything beyond it. Once a notice is served on a claimant under section 9, whatever may be the defects in the notice, he must seek his remedy by a reference under section 18. The Court may in view of the defect in the notice in this case give the claimant the benefit of the sub-section (3) of sec. 25. There is however no likelihood of the Rao Saheb successfully challenging the acquisition in a Court of law under sec. 18 on the ground that the notice under section 9 was defective.

There is no legal objection to issuing the draft letter at p. 91.

25/12/47

A.L.R. The view taken by Secy., R.D. ink his note.

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Office of the
Remembrancer of Legal Affairs.

The view expressed by the Secretary, Revenue Department, in his note dated 13-12-1946 at p. 87 ante is correct and there is no legal objection to issuing the draft letter at p. 91 ante.

sd/- D.V. Vyas

Remembrancer of Legal Affairs.

U. R. to R.D., No. 1944, dated the 26th February, 1947.

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Office of the R.L.A.

Seen and returned.

There appears to be no legal objection to Government acquiring lands under the Land Acquisition Act, 1894 for Co-operative Housing Societies. (see Advocate General's opinion No. 84, dated 12-9-1937).

Sd/- D.V.Vyas

Remembrancer of Legal Affairs.

U.R. to R.D., No. 2893 dated, the 25th March, 1947.

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Office of the R. L. A.

It appears from the notification dated 11-7-1945 (at pages 67 ante) issued under section 6 of the Land Acquisition Act, 1894, that Government has declared that lands forming parts of S.Nos. 91, 90, 16, 15/1, 15/2, 10, 11/A, 11/B, 14/1, 9, & 92/1, and 92/2 in District/ Ahmedabad, taluka Ahmedabad City Rural were needed for a public purpose i.e. for constructing houses for the poor. The Ahmedabad Municipality has now requested Government to apply the urgency clause under section 17(1) of the Land Acquisition Act, 1894. The Commissioner, N.D., in his endorsement at p. 97 observes.

> "The point for consideration is whether provisions of section 17 of the Land Acquisition can be made applicable after the notification under section 6 has been published. Moreover the provisions of section 17(1) apply to waste or arable lands only. In this case the land is neither waste nor arable."

The Secretary, Revenue Department, in his note at page 136 states:

> "It is not possible to apply the urgency clause if the land is not waste or arable as stated by the Commissioner. My recollection is that the greater part of it was an open site, but I think there were stray buildings which would take it out of the category of waste or arable. The best thing is for the Collector to expedite the award and then possession can be taken without the application of the urgency clause."

H.M. (R) has directed that the urgency clause should be applied to the open area.

R.L.A. is requested to advise.

Special powers under section 17(1) of the Land Acquisition Act, 1894 in cases of urgency can be used for taking possession of any waste or arable land needed for public purposes. The terms "waste" and "arable" have not been defined in the Act and consequently they are to be given their ordinary meaning. "Arable" means fit for tillage and "waste" means useless. The mere fact that these lands form part of the city survey numbers would not be a valid ground for holding that they are not arable. Consequently there appears no objection to considering the open area comprised in the city survey numbers notified for acquisition as arable provided it is not an appendage to the buildings. Whether or

not it as such appendage is a question of fact which it is for R.D. to decide. However, in view of the definite statement of the Commissioner any further enquiry may not be useful. In the circumstance it would be advisable to follow the course suggested by the Secretary, R.D.

The urgency clause can be applied whenever Government so directs (see section 17(1) of the Act). There is therefore no objection to applying the provisions of section 17(1) after the notification under section 6 has been published; and in fact the issue of a declaration under section 6 is imperative (see Gupta's Land Acquisition Act, p. 92). Consequently the doubt raised by the Commissioner on this point is not valid. It appears from the District Government Pleader's letter dated 25-4-1947 that the temporary injunction is now vacated by the Court. Consequently the difficulty pointed out in para. 4 of P.D. office note dated 31-3-47 does not arise.

Sd/- P. McLaren
6/5

Secretary of Legal Affairs.

K.R. to R.D., No. 4681, dated the 7th May, 1947.

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Office of the R.L.A.

Under section 48 ~~of~~ the Land Acquisition Act, 1894 power of withdrawal from acquisition of any land of which possession has not been taken rests with Government. In the present case Giverment has not yet taken possession of the land. Consequently it would be ~~competent~~ competent for Gover ment to withdrew from acquisition of the land.

An agreement under section 41 is to be taken even before a declaration is made under section 6 (see section 39); and it gives no immediate right to the Company to be put in possession. It contemplates merely a promise on the part of Government to transfer on payment of cost the land vesting in Government after acquisition. Consequently unless and until the land is taken possession of by and vests absolutely in Government under section 16, the agreement though executed under section 41 is unenforceable and no damage can be claimed from Government for the non-fulfilment of the agreement in the event of the withdrawl from acquisition.

It is true that a sanad has been executed in the present case by the Collector in favour of the Shri Balmukund Education Society declaring that the land has been transferred to the society by Government whereby the land vests in the society and should be held subject to certain conditions. Since the land was never taken possession of by Government under section 16, the ~~sanad~~ would create no title to the land in favour of the society, nor can it give any right to claim damages.

sd/- P.M.L.
11/6

Remembrancer of Legal Affairs.

U.R. to R.D., NO. 6107, dated the 11th June 1947.

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Office of the B.I.A.

On the report of the Land Acquisition Officer, Bombay Government on 8-1-1947 wrote to the Collector of Bombay as follows:-

"The procedure laid down in para. 103 of the Land Acquisition Manual is applicable to all acquisitions whether in cities or mofussil areas and the Superintendent of City Survey is the right person to conduct the joint survey of land under acquisition in the City of Bombay."

The Collector of Bombay has taken objection to the aforesaid instruction on the ground that no such survey is necessary as the survey records in Bombay are very accurate and that if at all any joint survey is needed it should be carried out by the Land Acquisition Officer as he has powers to call for title deeds for purposes of verification.

B.I.A. has raised the following two points for the consideration of the B.I.A.:-

(1) Whether in view of the fact that the maps and records in the Collector's office prepared by Mr. Rowland are so very reliable that any attempt to re-survey would be superfluous, compliance with the provisions of the Land Acquisition Act can be dispensed with.

(2) Whether neither the Collector nor the Superintendent of Survey has powers under the Land Acquisition Act, the Bombay City Land Revenue Act and the City Survey Act to call upon owners to produce documents of title for settling the boundries and the areas.

Question No. (1) :- Section 4(2) makes it lawful for any officer authorised by Government in that behalf to enter upon the survey and take levels of any land in such locality, to set out boundries of land proposed to be taken and to mark such levels and boundries. Section 8 makes it obligatory upon the Collector to cause the land (unless it has been already marked out under section 4) to be marked out. He shall also cause it to be measured, and (if no plan has been made thereof) a plan to be made of the same. Reading these two provisions together, demarkation, measurement and preparation of a plan seem to be absolutely necessary. The qualification inserted in the second parenthesis in section 8 would, however, suggest that if a plan be already available, a fresh plan need not be made. It is

feasible to dispense altogether with the survey under the Land Acquisition Act on the ground that the maps and records in the Collector's office prepared by Mr. Newland are very reliable. There should, however, be no objection to using the maps so far as they are helpful as part of the Survey and preparation of a plan under the Land Acquisition Act. I would adopt the observations made by Gupta in his commentary on the Land Acquisition Act and Principles of Valuation (p. 64) where the author says:-

"In areas where there are already cadastral survey maps or other authoritative plans, these may be used and ought always to be used for the convenience and easy understanding of all concerned unless measurement and plan are required for special reasons."

One such special reason would be where portion of the surveyed land has to be acquired and sub-divisions have consequently to be plotted and measured. Based upon this view of the law, the Bengal Land Acquisition Manual contains instructions (paragraph 89) which may be followed with advantage:-

"The Collector will, in the first place decide in consultation with the requiring Department or Company, whether the Settlement map should be used..... ..... when it is decided to use the Settlement map, it will not be necessary for the Collector to make a fresh survey, but he will proceed to verify the map and ....."

So long as it is made clear that survey is not being dispensed with, there should be no objection to making use of the survey maps already available.

Under section 8 the Collector shall cause the land to be marked out. Consequently, there appears no objection to entrusting to the Superintendent of Survey the measurement of lands under section 8.

Question No. (2):- The Bombay City Land Revenue Act, 1876 and the City Survey Act, 1915 appear to contain no provisions empowering the Collector or the Superintendent of Survey to call upon the owners to produce their title deeds. Under section 14 of the Land Acquisition Act, 1894 the Collector has power to compel the

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production of title deeds. The Collector as defined in section 3(a) does not include the Collector of Bombay or the Superintendent of Survey unless they are especially empowered. Consequently the view taken by the Collector of Bombay is correct.

Sd/- P.N.Lad
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Remembrancer of Legal Affairs.

U.R. to R.D., No. 6061, dated the 10th June, 1947.

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Office of the R.L.A.

It appears that the Adivasis of Vihigaon are residing on the land belonging to one Mr. Bhogale, who has now filed a suit for their eviction. Pending the suit the Adivasis have applied to the Collector for acquiring the land for them under the Land Acquisition Act. The Commissioner agrees that "the land should be acquired for ~~gaothan~~ but suggests that the initiation of proceedings may await till the decision of the suit filed by the landlord against the tenants as the facts of the case reported by the collector indicate that the tenants have a strong case on the ground of adverse possession."

The question raised by R.D. for the consideration of the R.L.A. are:-

(1) Whether Government will be prevented from taking steps for the acquisition of the land in case the landlord succeeds in getting vacant possession of the land despite the plea of adverse possession; if not

(2) Whether Government should wait till the suit is decided.

2. Even if Mr. Bhogale succeeds in getting vacant possession of the land there/would be nothing to prohibit Government from acquiring the land for the Adivasis under the Land Acquisition Act. Under section 3(f) the expression "public purpose" includes the provision of village s ites in Districts in which the Provincial Government ~~xxxxx~~ shall have declared by notification in the Official Gazette that it is customary for the Government to make such provision; and Government have declared by notification under section 3(f) that it is customary so to make provision for village sites. See page 33 paragraph 8 of the Manual of Land Acquisition and the notifications quoted therein. It would, therefore, be competent to Government in pursuance of their general policy to initiate acquisition proceedings for a village site for the Adivasis in this case, apart from their special difficulties arising out of their dispute with Mr. Bhogale.

3. To initiate acquisition proceedings during the pendency of the suit for the benefit of persons who have been claiming the land in suit as their own may seem at

first sight to lead to an anomalous position. The initiation of acquisition proceedings would not, however, affect the substantial dispute regarding title which the Adivasis claim on the strength of adverse possession; since the events subsequent to the institution of the suit would not ordinarily affect the merits of the dispute particularly in reference to adverse possession. On the other hand, the postponement of the acquisition proceedings till after the decision of the suit may expose the Adivasis to the risk of immediate eviction in case Mr. Bhagale succeeds in obtaining a decree; as at that stage there would be no method of protecting them by taking under the Land Acquisition Act immediate possession of this land which cannot be described as waste or arable land.

4. I would, therefore, advise that acquisition proceedings be started immediately and taken to a speedy conclusion. The Adivasis would also be "persons interested" within the meaning of that expression as defined in section 3(b). They may waive the payment of compensation in case they succeed in the suit; in the other event it may become payable to Mr. Bhagale.

sd/- P.M. Lal.
2/5/47.

Remembrancer of Legal Affairs.

U. R. to R. D., No. 4687, dated the 2nd May, 1947.

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Office of the R.D.A.

The area of the lands bearing Cadastral survey Nos. 822(part) and 827(part) of Mahim Division notified for acquisition as per Government Notifications R.D. No. 157/45, dated 19th March, 1945 and No. 10701/39, dated 11th May 1945, was 765 and 180 square yards, respectively, whereas the actual area of the lands as a result of the joint measurements taken after the second notification under section 6 has been found to be 768 and 851 square yards, respectively. The area of C.S. No. 822 is a little less than that notified but the area of C.S. No. 827 is much more than that mentioned in the aforesaid notifications. The Collector of Bombay, therefore, pointed out that this discrepancy of 71 square yards cannot be ignored and that an errata giving the correct area of cadastral survey No. 827(part) notified for acquisition may be published in Bombay Government Gazette in order to enable the Special Land Acquisition Officer to declare his award. R.D. considered that the difference of 71 square yards was too much and that it could not come under the expression "approximate area." The Collector was therefore requested to submit fresh proposals in respect of the excess area. The Special Land Acquisition Officer, Bombay City and B.G.D. has now forwarded draft notifications under section 4 and 6 but he is in doubt whether in absence of a separate plan to show precisely the 71 square yards out of C.S.No. 827 land can be notified. The R.D.A. is requested to advise in the matter.

6. Sub-section (1) of section 6 of the Land Acquisition Act, 1894, provides that the declaration under sub-section (1) shall be published in the Official Gazette, and shall state the district or other territorial division in which the land is situate, the purpose for which it is needed, its approximate area, and, where a plan shall have been made of the land the place where such plan may be inspected. Thus the declaration should refer to the land to be acquired by its "approximate area." In such cases if the actual area is found to be slightly in excess of the area given in the declaration

as to come under the expression "approximate area" there would be no objection to the excess area being included in the acquisition without another notification under section 4 or a declaration under section 6. (cf. Land Acquisition Manual, para. p. 88). In this case a plan of the land to be acquired was put up for inspection at the office of the Special Land Acquisition Officer for Bombay City and B.S.D. The survey numbers specified in the notifications described the land needed for a public purpose with sufficient precision and the description as to the area can therefore be held to be surplusage. In such cases the maxim falsa demonstratio non nocet applies and it has been held that if the space is precisely defined by other descriptions the statement of the measurement in square yards may be treated as surplusage and of no consequence (XIR 5 Bom. 208; 9 Bang. L. R. 151 at p. 169). Consequently, it appears, that it is not necessary to issue notifications under sections 4 and 6 in respect of the excess area and an erratum as proposed by the Special Land Acquisition Officer, Bombay City and B.S.D., at p. 106 ante, would suffice. (cf. R.L.A.'s No. O Leg. 11/29, dated 6-11-1930).

sd/- D.V. Vyas

Remembrancer of Legal Affairs.

U.R. to R.D., Order No. 7897, dated the 29th July, 1937.

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Office of the K. L.A.

By K.D. Notification No. 3713/45, dated the 17th January, 1947, the Nagathan Estate and the surrounding area was notified under section 4 of the Land Acquisition Act, 1894, for a National Park and it was also directed under sub-section(4) of section 17 that as the requisition was urgently necessary the provisions of section 5A shall not apply. By K.D. Notification No. ~~3713~~ 3713/45, dated 11-1-1947, a declaration was made under section 6 and it was directed under section 17(1) that the Collector should, on the expiration of fifteen days from the publication of the notice relating to the said lands under section 9(1), take possession of the lands. It appears from the letter of the Land Acquisition Officer at page 67 ante that a notice under section 9(1) has been accordingly issued but the boundries of the lands have not been demarcated andas no plan of the lands has been made. The Collector has raised the question whether possession of lands can be taken. The Secretary, K.D. observed at page 6 ante:-

"Before possession is taken it must be quite clear what land is being acquired and taken possession of. It will not do to take possession now and give up some or take some more later."

The K.L.A. is requested to advise.

Section 17(1) of the Land Acquisition Act, 1894, empowers Government in cases of urgency to direct the Collector to take possession of the land on the expiration of fifteen days from the publication of the notice mentioned in section 9(1). That notice under section 9(1) has been issued in the present case and it is presumed that fifteen days from the publication thereof have also expired. If so, there would ordinarily have been no objection to taking possession of the lands notified for acquisition; but the notice itself issued under section 9(1) appears to be materially defective.

Sub-section (1) of section 9 provides that the Collector shall <u>then</u> cause public notice to be given at convenient places on or near the land to be taken stating that the Government intends to take possession of the land, and that the claims to compensation for all interests in such land may be made to

him. Under sub-section (2), such notice shall state the particulars of the land so needed. The nature of these particulars is not specified, but it would be reasonable to exact such details as would be sufficient to describe the land and the purpose for which it is needed. It would certainly be necessary to indentify the land with sufficient detail so as to secure the appearance of the persons interested. Perhaps the particulars specified in section 6(2) and section 8 would be enough for the purpose" (see the Land Acquisition Act by Ch Pralhad and Ashvith, p. 129). This is reinforced by the word "then" in section 9(1) which clearly indicates to sequence of steps to be followed. The preceding section 8 provides that the land to be marked out, measured and planned. Consequently without the lands being marked out, measured and planned in the present case it was not possible to give a valid notice under section 9(1) stating the particulars of the lands and that being the legal position the notice given without such particulars must be held to be defective (Ibid p. 130). It appears therefore necessary that the lands should be first marked out, measured and planned and then a fresh notice under section 9(1) should be given stating the particulars of the lands before the Collector can take possession of them. The view taken by Secretary, Revenue Department at page 61 ante is correct.

Sd/- D.V. Vyas.

Remembrancer of Legal Affairs.

U.R. to R.D., No. 7900, dtd the 31st July, 1947.

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Office of the R.I.A.

The question raised in the R.D. note at page 49 ante for the consideration of the R.I.A. is whether the Sevashram which is registered under the Indian Trusts Act is a registered society within the meaning of clause (e) of section 3 of the Land Acquisition Act, 1894.

2. Clause (c) of section 3 of the Land Acquisition Act, 1894, defines the expression "Company" as meaning a company registered under the Indian Companies Act, 1882, or under English Companies Act, 1862 to 1890, or incorporated by an Act of Parliament or by an Indian Law or Royal Charter or letters Patent and includes a society registered under the Societies Registration Act, 1860, and a registered society within the meaning the of the Co-operative Societies Act, 1912. The Sevashram, not being a society registered under the Societies Registration Act, 1860, nor a registered society within the meaning of the Co-operative Societies Act, 1912, is not a registered society within the meaning of clause (e) of section 3 of the Land Acquisition Act. This position is conceded in Secretary L.D.'s note at page 5 ante. The view taken by R.D. at page 49 ante, is not correct.

3. It would appear that Secretary, R.D.'s note at page 5 ante that, in view of the above said legal position, it was decided that Government itself should acquire the lands for a public purpose, namely, for the hospital, and thereafter them in the Sevashram. It is not necessary in such an event to take any agreement from the Sevashram under section 41 and the provisions of Part VII of the Land Acquisition Act will not apply. The acquisition proceedings may be continued as in respect of lands acquired by Government for a public purpose and not for a company and after the lands vest in Government

they can be granted or transferred or assigned for use to the Benadirsn on such terms as Government may think fit. It will be necessary, however, under the proviso to section 6(1) that Government should pay out of its revenues the whole or part of the compensation awarded for acquisition of the lands.

Sd/- D.V. Vyas.

Remembrancer of Legal Affairs.

U. O. to R.D., through H.M. (L), No. 275

dated the 7th August, 1937.

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It appears that the Ahmedabad People's Co-operative Bank Ltd. has purchased a site for Rs.32,225 in 1939. As the business of the Bank has since increased that area is found to be inadequate for its requirements. The Bank has also decided to construct a Safe Deposit Vault for which more space is absolutely necessary. Private negotiations to purchase the adjoining C.Nos. 4735, 4734, 4733, 3648,x and 3649, having failed the Bank has applied to Government to acquire ~~four~~ three C.Nos. under the Land Acquisition Act, 1894. The District Government Pleader, who was consulted is of the opinion that the Bank is doing social work and the acquisition would be covered by section 40 (1)(b). The R.L.A. is requested to see for remarks.

Under clause (b) of section 40 of the Land Acquisition Act, 1894, consent for the acquisition of land for a company shall not be given unless the Provincial Government be satisfied either on the report of the Collector under section 5A or by enquiry as hereinafter provided that such acquisition is needed for some work and that such work is likely to prove useful to the public. In his opinion No. 7737 dated 30-3-40 (1940) where the question of acquiring land for constructing godowns for the Farmers' Co-operative Cotton Ginning and Pressing Society Ltd. Surat was raised, the R.L.A. opined:-

"If the use of land further co-operation and brings benefits to 5000 cultivators as indicated, the purpose can be deemed to be useful to the public."

It appears ~~that~~ the Bank in the present case is catering to the needs of the poor and middle class people and small businessmen. It has also been helping Harijans by means of loan on easy terms for enabling them to build houses. It appears that the land proposed to be acquired is needed for its business and also for constructing a Safe Deposit Vault. Consequently, the use of the land is likely to advance the cause of co-operation and also be benefit the public by providing ~~the~~ a Safe Deposit Vault. There would, therefore, be no

P.T.O.

objection to Government acquiring the land for the Bank.

sd/- D. V. Ryan

Remembrancer of Legal Affairs.

U.R. to E.D., No. 5364, dated the 14th August, 1949.

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~~Affidavit~~

R.L.No. 5364
2-8-47.

Submitted.

8. The facts of the case are as follows:-

Certain quarry lands at Mandola B.B.R. belonging to one Mr. J. D. Runwalla were acquired by Government under Land Acquisition Act for a Suburban Scheme, and subsequently lands of Mr. Runwalla were also acquired for the Development Department. The possession of the landappears to have been taken in March, 1938. Subsequently Government came to a settlement with Mr. J. D. Runwalla and according to the terms of the settlement, Mr. Runwalla was to be given a cash compensation plus a piece of land measuring 3 acres and 1 gunthe the value of which(Rs. 4184-14-0) was to be deducted from the cash compensation. The piece of land proposed to be given to Mr. Runwalla by Government formed part of S.No. 53 of Mandala and was comprised partly of Mr. Runwalla's own land measuring 2 acres and 27 gunthas and partly (0- 14 Gunthas) of land belonging to Raghnath-das Gopaldas.

Under the terms of settlement the sum of Rs. 4184-14-0 payable by Mr. Runwalla on account of 3 acres 1 guntha of land sold to him was deducted from the amount of compensation payable to him. However the possession of the land measuring 3 acres and 1 guntha which was sold to him was never handed over to him. For some reason or other it appears that Mr. J. D. Runwalla never asked for the possession of the land sold to him under the settlement and the possession has remained with Government from 1938. The land eventually came to be treated as Government land and was leased to different persons and at present it is in the hands of the Defence Department.

5. On 23rd March, 1944, Mr. M. J. Runwalla son of Mr. J. D. Runwalla, by a letter informed the Government that though the sum of Rs. 4184-14-0 was deducted from the amount of compensation, the land in respect of which this amount was deducted was never handed back and that therefore

the sum of Rs. 4184-14-0 plus interest at 6. ~~xxx~~ per annum from 5-8-35 till payment should ~~xxx~~ be paid to him.

4. The Governme t in R.D. considered the case and the Secretary R.D. agree to make an ex gratia payment of Rs. 4184 plus interest at 4 % from 1st July, 1939 as the ~~xx~~ claim was revived on 10th June, 1939 although he was of the opinion that Mr. Runwalla had no chance of his succeeding against Govt. in a civil suit.

5. In this connection, R.L.A. had opined that Mr. Runwalla's claim for refund of the purchase money with interest by way of a charge on the property is now time barred (vide section 100 of the T.P. Act, read with Article 132 of the Limitation Act) and had stated that apart from the legal position, Mr. Runwalla has an equitable claim either for refund of the consideration or for possession of land. He had further stated that the ex-gratia payment as proposed by Secy. R.D. is reasonable and fair.

6. Mr. Runwally through Mr. G.B. Oza, Architect, Engineer, Surveyor has now requested the Government to state as to why the interest from 15th March, 1935 to 10th June 1939 has been held back from him as he is entitled as per Land Acquisition Act to get interest from the date on ~~xx~~ which the possession of the above land was taken by the Govt. He further states that it was only in 1939 that he came to know that the said land was still his in the Talati's records but in Govt. possession. It was only then that he applied to Government to return the said land to him.

7. R.D. has requested the R.L.A. to state whether in equit , Mr. Runwall has a claim for the past arrears of interest viz. from 15th March, 1935 to 10th June 1939, now claimed by him on the grounds advanced in his letter at p. 111.

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11/8/56

Office of the R. I. A.

The grounds advanced by Mr. Rumwalla in his letter at page 111 ante disclose an equitable for the past arrears of interest.

Sd/- P. M. Lad
7618
Remembrancer of Legal Affairs.

H. R. to R. D., No. 8701, dated the 27th August, 1947.

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4 c.

Office of the R.I.A.

The view taken by the Revenue Department at page 21 ante is correct. If a well on a private property is the only source of water supply to the village and if the owner of such well does not allow the public such supply, it would be competent for the Government to acquire the land with the well for the District Local Board, such acquisition being for a public purpose within the meaning of the Land Acquisition Act, 1894.

Sd/- P.M. Lal
28/8
Remembrancer of Legal Affairs.

U.R. to R.D.,No. 6830, dated the 30th August, 1947.

SVV
11/5/56
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Office of the R.L.A.

It is not necessary that Government should withdraw from acquiring so much land as is required by the Military, since under clause 6 of the agreement between Government and the Kirloskar Oil Engine Co. Ltd. the latter can be required to transfer the land on payment of the price as ~~provided to transfer the land on payment of the price as~~ provided therein. The view expressed by the Collector in paragraph 5 of his endorsement at page 259 ante is correct. The R.L.A.'s opinion in the Ahmedabad case has no application in the present case.

sd/- P.M. Lad
5.9.1947

Remembrancer of Legal Affairs.

U.R. to R.D., No. 9018 dated 6th September, 1947.

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11/5/56
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Office of the R.L.A.

The question raised for the consideration of the R.L.A. is whether both the notifications under sections 4 and 6 read with section 17(4) of the Land Acquisition Act, 1894 can be published simultaneously.

2. Section 17(4) of the Land Acquisition Act, 1894 provides that in the case of any land to which in the opinion of the Provincial Government the provisions of sub-section (1)or sub-section (2) are applicable, the Provincial Government may direct that the provisions of section 5A shall not apply, and, if it does so direct a declaration may be made under section 6 in respect of the land at any time after the publication of the notification under section, 4 subsection (1). It appears clear from this provision that there should be some interval between the publication of the notification under ~~section~~ section 4(1) and of the notification under section 6. Section 4(1) provides for the publication of a preliminary notification and section 6(1) for the publication of a declaration that Government is satisfied that the land is needed for a public purpose. These two provisions read together also contemplate some interval between the two notifications. It is true that in the heading to form "D" at page 63 of the Land Acquisition Manual it is stated in the bracket that this form is to be used when in view of the urgency of acquisition the notification under section 6 is to be issued simultaneously with or immediately after the notification under section 4 is issued in form "D". It is not stated on what authority these two notifications can be simultaneously issued. As stated above section 17(4) itself contemplates some interval, however slight it may be, between the two notifications. Consequently it appears desirable that Government should first issued a notification under section 4(1) and thereafter a notification under section 6(1).

Sd/- P.M. Lal.

Remembrancer of Legal Affairs.

L.R. to R.D., No. 9070, dated the 6th September, 1947.

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14/5/56

Office of the R.L.A.

Clause (h) of section 108 of the Transfer of Property Act provides that in the absence of any agreement to the contrary the lessee may even after the determination of the lease, remove, at any time whilst he is in possession of the property but not afterwards, all things which he has attached to the earth; provided he leaves the property in the state in which he received it. The option is with the lessor either to take the buildings on paying compensation or if he is unwilling, to allow the lessee to remove the buildings. Since the lands on which the military hutments stand have been taken by the military on lease from the Bombay Municipality, the right to occupy these hutments on purchase from the military must be acquired by this Government before the military ex vacates them. Further it appears that the Municipality has already disposed of these lands on long leases subject to the condition of delivery of possession to the lessees immediately after the military vacates them. It would, therefore, be necessary to acquire the rights of the lessees to entitle Government to be in lawful occupation of the hutments after they are vacated by the military, since otherwise both Government and the Municipality would be involved in litigation. Government will have, therefore, to take steps to acquire these lands. In view of the fact that the proceedings under the Land Acquisition Act, 1894, involve delay, H.H.(L) appears to contemplate the promulgation of an Ordinance under section 88 of the Government of India Act, 1935, to expedite the acquisition of these lands. The R. L. A. is requested to advise what course should be followed by Government.

2. It is doubtful whether the powers conferred by Entry No. 21 in the Provincial Legislative List warrant any legislation for requisitioning immovable property. In his opinions dated 19-3-1946, 3-5-1946, 1-6-1946 and 5-6-1947 the R.L.A. has taken the view that so long as Mr. Justice Bhagwati's decision in Tan Bug T sim vs.

Collector of Bombay (47 B.L.R. 1010) stands unreversed we are bound by the finding that requisitioning is not a subject within the competence of the Provincial Legislature. This view is upheld by the Advocate General recently in his opinion dated 17-2-1947. It is true that provision has been made for requisitioning in section 4(1) of the Madras Essential Articles Control and Requisitioning (Temporary Powers) Act, 1946 (Madras Act XIV of 1946). But the Madras Government is not bound by Mr. Justice Bhagwati's judgment. Moreover, that Government has tried to connect the power of requisitioning given under section 4(1) with the question of maintaining supply of essential articles. In the circumstances it appears that no Ordinance for requisitioning the lands can be issued. The lands will have, therefore, to be acquired under the Land Acquisition Act, 1894. It is true that if it is considered that the proceedings under the Land Acquisition Act involve unnecessary delay, an Ordinance can be issued prescribing some other summary procedure for compulsory acquisition of the lands subject to the provisions of section 88(1) proviso (b) and section 299 of the Government of India Act, 1935. Whether we should adopt the expedient of an Ordinance on the lines of the Bombay Forfeited Lands Restoration Act is a question of policy for Government's decision. I hesitate to advise the setting up of a precedent by adopting that course.

In my opinion, the best course is to initiate acquisition proceedings at once and take them to termination as expeditiously as possible. The Military Department may be requested not to vacate the quarters until the proceedings are concluded. Under section 5 of the Land Acquisition Act objections have to be filed within 30 days; and it should not take long to frame an award. I would add that the special powers in cases of emergency under section 17 of the Land Acquisition Act cannot be used in this case

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as the lands is not waste or arable land.

sd/- P. M. Lal.
1914.

...mbrancer of Legal Affairs,

K. R. to R. D., No. 4017, dated the 19th April, 1947.

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Office of the R.L.A.

Validity of Land Acquisition proceeding by Addl. Spl. L. A. Officer.

Land Acquisition Act, 1894.

A piece of land measuring 1 acre and 29 gunthas out of survey No. 63/2 of Aeher was notified for acqn. under sections 4 and 6 of the L. Acq. Act (Vide Govt. Notification No. 10212/39 dated, 26-8-44 and No. 10199/39 dated 1-8-45) and the Spl. Land Acquisition Officer Ahmedabad was appointed under clause (c) of section 3 of the L. Acq. Act. to perform the functions of the Collector. It appears that the acquisition proceedings were completed by the Addl. Spl. Land Acquisition Officer, Ahmedabad instead of the Land Acquisition Officer, Ahmedabad as notified by the Government. One Mehta V.T. Shah the owner of survey No. 63/2, has now given a notice under section 80 of the Code of Civil Procedure threatening to file a suit against Government for a declaration that the acquisition proceedings completed by the Addl. Special Land Acquisition ~~xxx~~ Officer Ahmedabad are illegal, void and not binding on him. The R.L.A. is requested to advise whether the acquisition proceedings completed by the Addl. Special Land Acquisition Officer, Ahmedabad, are void and if so to suggest how the position can, if possible, be ~~xxxxxxxxx~~ regularised.

Section 7 of the Land Acquisition Act, 1894, provides that whenever any land shall have been so declared to be needed for public purpose or for a company the Provincial Government or some officer authorised by the Provincial Government in this behalf shall direct the Collector to take order for the acquisition of the land. Clause (c) of section 3 defines the expression "Collector" as meaning the Collector of a district and includes a Deputy Commissioner or any officer specially appointed by the Provincial Government to perform the functions of the Collector under this Act. In Mahomad Siddique v. The Secretary of State (8 Oudh Court, 118), it was held that the expression "Collector" does not include an officer to whom the Deputy Commi-

sioner thinks fit to delegate his duties and an award made by such delegate is illegal. (See Om Prakash's Compulsory Acquisition of Land s in Br. India p. 89) In the present case the Officer specially appointed by the Provincial Government to perform the functions of a Collector under the Land Acquisition x Act, was the Land Acquisition Officer, Ahmedabad. Consequently, the Addl. Spl. Land Acquisition Officer cannot be considered to be an Officer specially appointed by the Provincial Government to perform the functions of a Collector under the Land Acquisition Act, and the proceedings taken by that officer for the acquisition of the land are void and illegal and not be binding on the owner. The threatened suit of Rao Saheb V.T. Shah, if filed, will succeed.

It is not possible to regularise the position in the present case since the proceedings taken by the Addl. Special Land Acquisition Officer are ab initio void and in-effective. The proper course therefore would be to begin the acquisition proceedings de novo. The Government may authorise the Addl. Special Land Acquisition Officer to exercise powers of the Collector under the Land Acquisition Act, whereupon he may proceed to take order for the acquisition of the land.

Sd/- P.M.Lad.
2/11/47.

Remembrancer of Legal Affairs.

U.R. to R. D.,FC. 10617, dated the 6th November, 1947.

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14/8/86
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Office of the R.L.A.

It appears that since the military assets on the lands in question have been demolished the land cannot be acquired under clause(a) of section 8(3) of the Requisitioned Land (Continuance of Powers) Act, 1947. The Land, however, be acquired under clause (b) of section 8(3) provided certain conditions are complied with. Information is being called to consider whether those conditions are satisfied to enable such acquisition. Pending the receipt of that information the R. & I. Department considers it advisable to issue a notification under section 4 of the Land Acquisition Act, 1894 in order to save Government from paying higher prices in case the prices go up on account of the influx of the buyers from Punjab and Sind. The question raised for the consideration of the R.L.A. is whether it would be legally feasible to cancel the notification issued under section 4 (a) of the Land Acquisition Act when Government decides to acquire the land under the Requisitioned Land (Continuance of Powers)Act, 1947.

Although under section 48(1) of the Land Acquisition Act, 1894 it would be feasible to withdrew from the acquisition, and although no compensation would ordinarily be payable unless notice has been issued under section 9, it would nevertheless be inadvisable in t is case to follow the course of issuing notification under section. 4. If eventually the land has to be acquired under the Requisitioned Land (Continuance of Powers) Act, 1947, and as the purpose is presumably a public purpose, withdrawal under section 48(1) would be resisted as a fraud upon the Act intended solely to deprive the owner of the higher value he may get under the Act as compared to the value admissible under the Requisitioned Land(Continuance of powers) Act, 1947; and compensation for loss may be claimed on that ground and also on the ground that Government having the choice of acquisition under two enactments /made its election and declared its intention

of paying higher compensation under the Land Acquisition Act ~~xxxx~~ upon which declaration the owner may even act by selling the property realising a better price.

To avoid these complications it would be safer to decide, after securing requisite information, whether the land can be acquired under clause (b) of section 5(3) of the Requisitioned Land (Continuance of Powers) Act, 1947; and if it is decided that it can not be so acquired then to proceed under the Land Acquisition Act, 1894.

Sd/- P. M. Lal
11/12

Secretary to Government of Legal Affairs.

U. R. to R. & I. Department. No. 11913,
dated the 11th December, 1947.

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14/6/56
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Offices of the R.L.A.

Publication of a notification under sections 4 and 17 of the Land Acquisition Act.

...ken and returned.

Unless an agreement has been executed by the Company the urgency clause under section 17 of the Land Acquisition Act, 1894, cannot be applied in the present case. Consequently the proper procedure to follow would be to issue a preliminary notification under section 4(1) and after the Company has executed the agreement, to issue a notification either in Form G or Form H.

Sd/- I.M. Lad
14/11
Remembrancer of Legal Affairs.

R.R. to R. D., No. 10881, dated the 15th November, 1947.

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14/6/86
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Office of the R.L.A.

Disposition of acquired land Para. 323 of the Land Acquisition Manual.

The land having already vested in Government, it would be open to Government to dispose of it, if it be not needed by Government for the purpose for which it was acquired, Paragraph 323(1) of the Land Acquisition Manual which is non-statutory would be no bar to such disposal to any person other than the previous owner if the use of the land by such person would be for a public purpose. There would therefore be no legal objection to disposing of the land to the Bejipura Gram Vikas Sahakara Mandal, Bejipura.

Sd/- P.M. Lad
14/11
Remembrancer of Legal Affairs.

U.O. to R.D., No. 10847, dated the 15th November, 1957.

GW
14/5/56
4 c.

Office of the R.L.A.

I think the proper course would be to issue an erratum on page 59 as amended. By virtue of the notice issued under section 7 (1) of the Requisitioned Land (Continuance of Powers) Act, 1947, the lands which were under requisition have already vested in Government. In Government v. Ranchhodji (13 Bom. L.R. 34) it was held that there could be no such thing as compulsory acquisition of land owned by and in the occupation of the Crown. Consequently it would not be legally feasible to proceed with the acquisition under the Land Acquisition Act of these lands which have already vested in the Crown. These lands form portions of survey numbers which have been notified for acquisition under the Land Acquisition Act. No doubt section 48(1) of the land acquisition Act provides for withdrawing from the acquisition of any lands of which possession has not been taken, as stated above Government is already in possession of these lands. Consequently section 48(1) appears to have no application. The only course feasible would be to issue an erratum as proposed omitting these lands from the notification already issued under sections 4, and 6, so that the remaining portions of survey numbers which are in possession of persons other than Government may be acquired. The preamble to the erratum should make it clear that the areas now omitted already vest in Government and have for that reason been deleted.

Sd/- P.M. Lal.

Remembrancer of Legal Affairs.

U.R. to R.D., No. 40931, dated the 13th November, 1947.

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14/5/56

Office of the R.L.A.

Since the land is already built over, it maybe, mentioned in the notification that the land is required for the godown built thereon by Government.

The land being already in possession of Government and no longer arable or waste the occupancy clause cannot be applied.

sd/- P.M. Lad
29/11

Remembrancer of Legal Affairs.

H.R. to R.D., No. 11470, dated 1st November, 1947.

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14/5/50
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Office of the B.L.A.

Land
Acquiring land for housing scheme in Greater Bombay.

Land Acquisition Act, 1894. Sections 4(1), 5(a).

It appears that the Housing Commissioner has prepared a master plan in which certain areas in Greater Bombay have been earmarked as residential area and with a view to prevent inflation of land value, it is suggested that 64 sq. miles or 41,000 acres of land should be notified under section 4 of the Land Acquisition Act, 1894, and of these 10 sq. miles or 6,400 acres may be notified in the first stage. It is mentioned in para. 5 of the Housing Commissioner's note, at pages 3-5 ante, that after notifying lands at present under section 4, Government apparently does not intend to proceed further in the matter immediately or to start enquiries under section 5A or to take steps for the subsequent notification under section 6 but proposes to mark time and wait until acquisition and possession of land becomes necessary or feasible, then to withdraw the original notification. The questions raised for the consideration of the B.L.A. are:-

(1) whether for taking acquisition proceedings under the Land Acquisition Act, it is necessary to state that the proposed acquisition is for a definite public purpose.

(2) whether by notifying such large areas of land under section 4 without any specific public purpose and subsequently de-notifying it, Government would be liable to pay any compensation to the owners of the land so affected.

Under sub-section (1) of section 4 of the Land Acquisition Act, 1894, all that is necessary to be stated in the notification is that the land in the locality is needed or likely to be needed for a public purpose. Consequently, if Government considers that the land in the present case, however vast the area may be, is needed or likely to be needed for a public purpose, that is to say for building purpose, there would be no legal objection to issuing a notification under section 4(1). It is one thing to say that the land might be needed for a public purpose, and another thing to say that the land is needed or likely to be needed for a

purpose, the former being vague and the latter definite so far as the public purpose is concerned. There is nothing under the land Acquisition Act that can prohibit the Government from revoking the nitification under section 6(1/ if it decides not to proceed with the acquisition of the land after hearing the objections under the section 5(a) and ordinarily, in the case of such revocation, the only compensation that Government would be liable to pay, would be the damages determinable under section 6. But from the facts stated in the Housing Commissioner's note, it appears, that the intention of Government in notifying the land under section 4(1) is merely to prevent inflation of land prices and to take advantage of it later on if land were really needed for the purpose. Apparently this amounts to a fraud on the Act, and a claim for compensation against Government may lie if the owners have, by the notification under section 4(1), really suffered damages by reason of depreciation of land values subsequent to such notification.

Sd/- P. M. Lad
11/12

Remembrancer of Legal Affairs.

U.R. to R.D., No. 11941, dated the 11th December, 1947.

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12/5/50
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Office of the P.L.A.

Acquisition of land for reconstruction of congested.

Land Acquisition Act, 1894.

With a view to make the execution of the post war Road Development Schemes, in the Bombay suburban District self supporting, the Chief Engineer, Road Projects Division, (North), in his report at page 1 and 2 to the Hon'ble Minister has suggested that the additional agricultural land on both sides of the proposed Relief Road on most of the B.P.& C.I. Railway to the extent of about 8000 acres at suitable places may be acquired. The Special Land Acquisition Officer for Bombay City and Bombay Suburban District in his letter at page 7 considers that large areas of land can not be acquired only for the purpose of making the scheme self-supporting, but there would probably be a less objection to the acquisition of the fronto e lands, if any, if the purpose of acquisition is mentioned to be not the one for making the road projects self-supporting but some such as providing proper development along the road frontage; etc. The Collector, Bombay Suburban District agrees with the view of Special Suburban Land Acquisition Officer. The P.L.A. is entirely in other respects on the view expressed by the Special Land Acquisition Officer.

Para 6(b), the Land Acquisition Act, 1894, empowers Government to acquire land needed or likely to be needed for any public purpose and the construction of a public road is certainly a public purpose. Consequently it would be quite competent for Government to acquire land needed or likely to be needed for the road projects in the Bombay Suburban District.

"Municipal and other public bodies are sometimes given powers to take land beyond that which is necessary for the execution of the proposed work, in order that some part at least of the increased value of the adjoining land may be secured in lieu of the burden upon the ratepayers. Such lands are said to be acquired, or taken for the purpose of 'betterment', i.e. the public body is empowered to sell or lease them at what may be enhanced value.

"If the act strictly authorises the land to be taken for the actual works only, a local

F. 56-58

authority or other public body will be restrained from taking more than is actually necessary for a certain work, but if it is made clear that the intention of the authority or public body is to be clear as to what is necessary, it will then be at liberty to take all that is necessary on the plans ... [illegible] ... rities are authorised to take land for a time for any ... [illegible] ... of the land is not specified in the ... they cannot, in order ... [illegible] ... the rate-payers, take more than is bona fide necessary for the purpose."

(See Halsbury's Laws of England, Volume X, pages 60-61.)

This principle allowing a local authority to acquire more land than is necessary for strict purposes with a view to re-sale was applied in "Franchise Secretary of State" (30 Ch. D. page 1887), since the power to acquire an excess land for the construction of buildings and disposal of that land was expressly given to the Municipality by section 7 of the Municipal Boroughs Act, 1882. That principle cannot be applied in the present case, as the authority's purposes to acquire the land is Government itself and their authority is bound mainly by the provisions of the Land Acquisition Act, 1894, which does not permit the acquisition of any excess land for the purpose of re-sale. Consequently if the object of acquiring the land in the present case is re-sale of surplus, the acquisition would certainly be ultra-vires. It would also be ultra-vires if it is done with that object under the cloak of developing the Rail Freight Ltd.

Sd/- P.M. Nair.
15/12.

Assistant Secretary of Legal Affairs.

P.M. to R.D., No. 1887, dated the 14th December, 1957.

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14/8/80
6 c.

Office of the R.L.A.

Relinquishment of acquired land.

Land Acquisition Act, 1894.

There would be no legal objection to Government retaining the land for using it as a dry-cattle farm and paragraph 388 (1) of the Land Acquisition Manual would be no bar to it (Our R.L.A.'s opinion No. 10847, dated 18-11-1947.).

Sd/- P.M. Lad
23/12

Deputy Secretary of Legal Affairs.

U.O. to R.D., No. LM367, dated the 24th December, 1947.

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24/6/50
G C.

Cancellation

~~Cancellation~~ or revisions of the orders contained in Government letter No. 3272/45 dated 9-1-1947.

Land Acquisition Act, 1894.

Office of the R.I.S.

It is true as observed by the Collector that in para. 28A of the Land Acquisition Manual it is stated that Government has authorised the Superintendent, Bombay City Survey and Land Records Office, to exercise the powers under section 4 (3) of the Land Acquisition Act. But these powers are different from those under section 14 which can be exercised only by the Collector of the district and any officer specially appointed by Government to perform the functions of a Collector under this Act. Consequently the empowerment of the Superintendent, Bombay City Survey and Land Records Office under section 4(3) would not warrant his exercise of powers under section 14. The view taken by the Collector of Bombay in this respect is not correct.

Sd/- P.N.Lad
8/2

Remembrancer of Legal Affairs.

U.R. to R.D., No. 276, dated the 9th January, 1948.

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